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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173-0629-03]

RIN 0648-XC152

2012-2013 Accountability Measure and Closure for Commercial
Black Sea Bass in the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the commercial sector of black sea bass in the exclusive economic zone (EEZ) of the South Atlantic through this temporary final rule. NMFS has determined that the annual catch limit (ACL) (equal to the commercial quota) for black sea bass will have been reached by October 8, 2012. Therefore, NMFS closes the commercial sector for black sea bass in the EEZ of the South Atlantic. This closure is necessary to protect the black sea bass resource.

DATES: Closure is effective 12:01 a.m., local time, October 8, 2012, through 12:01 a.m., local time, on June 1, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone 727-824-5305, e-mail Catherine.Hayslip@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), and black sea bass is a species contained in that FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS published a temporary rule to delay the start of the 2012-2013 fishing season for the commercial sector of black sea bass from June 1, 2012 to July 1, 2012 (77 FR 28305, May 14, 2012). The commercial ACL (commercial quota) for black sea bass in the South Atlantic is 309,000 lb (140,160 kg), gutted weight, for the current fishing year (July 1, 2012, through May 31, 2013) as specified in 50 CFR 622.42(e)(5).

Background

Black sea bass are managed throughout their range. In the South Atlantic EEZ, black sea bass are managed under the FMP by the Council from 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina, south to the boundary between the South Atlantic and Gulf of Mexico (Gulf) Councils, off of Key West, Florida. The boundary between the South Atlantic and Gulf Councils coincides with the line of demarcation between the Atlantic Ocean and the Gulf, which begins at the intersection of

the outer boundary of the EEZ, as specified in the Magnuson-Stevens Act, and 83°00' W. long., proceeds northward along that meridian to 24°35' N. lat., (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf. From Cape Hatteras Light, North Carolina, through Maine, black sea bass are managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. Therefore, the closure provisions contained in this notice are applicable to those vessels harvesting or possessing black sea bass from Cape Hatteras Light, North Carolina, through to the boundary between the South Atlantic and Gulf Councils (off of Key West, Florida), as described above.

The AM at 50 CFR 622.49(b)(5)(i) requires NMFS to close the commercial sector for black sea bass when the ACL (quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Also, under 50 CFR 622.43(a), NMFS is required to close the commercial sector for a species or species group when the quota for that species or species group is reached, or is projected to be

reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined that the available commercial ACL (commercial quota) of 309,000 lb (140,160 kg), gutted weight, for black sea bass will be reached on or before October 8, 2012. Accordingly, NMFS is implementing an AM to close the commercial sector for black sea bass in the South Atlantic EEZ at 12:01 a.m., local time, on October 8, 2012 from 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina, south to the boundary between the South Atlantic and Gulf Councils, as previously described in this temporary rule. The commercial sector for black sea bass will remain closed until 12:01 a.m., local time, on June 1, 2013. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having black sea bass onboard must have landed and bartered, traded, or sold such black sea bass prior to 12:01 a.m., local time, October 8, 2012.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(vii) and (d)(2), respectively, apply to all harvest or possession of black sea bass in or from the South Atlantic EEZ, and the sale or purchase of black sea bass taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of black sea bass that were harvested, landed ashore, and sold prior to 12:01

a.m., local time, October 8, 2012, and held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for black sea bass would apply regardless of whether the fish were harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial sector to the harvest of black sea bass constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the regulations have already been subject to notice and comment, and all that remains is to notify the public of the closure.

Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the black sea bass stock because it is subject to overfishing and the

capacity of the fishing fleet allows for rapid harvest of the commercial ACL (commercial quota). Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL (commercial quota), which would impede the rebuilding of the stock by the end of the rebuilding period set at 2016.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: October 2, 2012

Lindsay Fullenkamp,
Acting Deputy Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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